

109TH CONGRESS
1ST SESSION

S. 96

To target Federal funding for research and development, to amend section 1928 of the Social Security Act to encourage the production of influenza vaccines by eliminating the price cap applicable to the purchase of such vaccines under contracts entered into by the Secretary of Health and Human Services, to amend the Internal Revenue Code of 1986 to establish a tax credit to encourage vaccine production capacity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To target Federal funding for research and development, to amend section 1928 of the Social Security Act to encourage the production of influenza vaccines by eliminating the price cap applicable to the purchase of such vaccines under contracts entered into by the Secretary of Health and Human Services, to amend the Internal Revenue Code of 1986 to establish a tax credit to encourage vaccine production capacity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Flu Vaccine Incentive
3 Act of 2005” or the “FLU–VIA”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) 30 years ago, more than a dozen companies
7 produced the influenza vaccine in the United States.
8 As of 2004, only 2 companies make the vaccine for
9 the United States.

10 (2) Currently, the influenza vaccine is grown in
11 eggs through a process that takes approximately 6
12 months and consumes tens of thousands of eggs.

13 (3) Companies are developing new technologies
14 for the faster and safer production of the influenza
15 vaccine. For example, one manufacturer is testing a
16 process that relies on cell lines from silk moths, a
17 technique that promises to shave the production
18 time by at least a month and reduce the costs sig-
19 nificantly.

20 (4) The United States should do all that it can
21 to encourage research and development of new tech-
22 nologies for the production of influenza vaccines.

23 **SEC. 3. TARGETING APPROPRIATED FUNDS FOR RESEARCH**
24 **AND DEVELOPMENT.**

25 Effective as if included in the enactment of the Con-
26 solidated Appropriations Act, 2005 (Public Law 108–

1 447), under the heading relating to “Public Health and
 2 Social Services Emergency Fund” under title II of division
 3 F, strike “, and if determined necessary by the Secretary,
 4 the purchase of influenza vaccine,”.

5 **SEC. 4. ELIMINATION OF PRICE CAP FOR THE PURCHASE**
 6 **OF INFLUENZA VACCINES.**

7 (a) IN GENERAL.—

8 (1) VACCINES FOR CHILDREN PROGRAM.—Sec-
 9 tion 1928(d)(3) of the Social Security Act (42
 10 U.S.C. 1396s(d)(3)) is amended—

11 (A) in subparagraph (B), by striking
 12 “With” and inserting “Except as provided in
 13 subparagraph (D), with”; and

14 (B) by adding at the end the following new
 15 subparagraph:

16 “(D) NONAPPLICATION TO INFLUENZA
 17 VACCINES.—With respect to contracts entered
 18 into for the purchase of a pediatric vaccine that
 19 is an influenza vaccine, and to the maximum
 20 extent practicable, with respect to any other
 21 contracts entered into by the Secretary for the
 22 purchase of an influenza vaccine, the price for
 23 the purchase of such vaccine shall be estab-
 24 lished without regard to subparagraph (B).”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by paragraph (1) shall apply to contracts entered
3 into on or after the date of enactment of this Act.

4 (b) APPLICATION TO PURCHASES FOR OTHER FED-
5 ERAL PROGRAMS.—Section 1928(d)(3)(D) of the Social
6 Security Act (42 U.S.C. 1396s(d)(3)(D)), as amended by
7 subsection (a), shall apply with respect to the purchase
8 of an influenza vaccine by any Federal agency and in lieu
9 of the price that would otherwise apply to such a purchase
10 under the schedule for the purchase of drugs by the Vet-
11 erans Administration under section 8126 of title 38,
12 United States Code, under agreements negotiated by the
13 Secretary of Health and Human Services under section
14 340B of the Public Health Service Act (42 U.S.C. 256b),
15 or otherwise.

16 **SEC. 5. INCENTIVES FOR THE CONSTRUCTION OF INFLU-**
17 **ENZA VACCINE MANUFACTURING FACILITIES.**

18 (a) INFLUENZA VACCINE MANUFACTURING FACILI-
19 TIES INVESTMENT TAX CREDIT.—

20 (1) ALLOWANCE OF CREDIT.—Section 46 of the
21 Internal Revenue Code of 1986 (relating to amount
22 of investment credit) is amended by striking “and”
23 at the end of paragraph (1), by striking the period
24 at the end of paragraph (2) and inserting “, and”,

1 and by adding at the end the following new para-
 2 graph:

3 “(3) the influenza vaccine manufacturing facili-
 4 ties investment credit.”.

5 (2) AMOUNT OF CREDIT.—Section 48 of such
 6 Code is amended by adding at the end the following
 7 new subsection:

8 “(c) INFLUENZA VACCINE MANUFACTURING FACILI-
 9 TIES INVESTMENT CREDIT.—

10 “(1) IN GENERAL.—For purposes of section 46,
 11 the influenza vaccine manufacturing facilities invest-
 12 ment credit for any taxable year is an amount equal
 13 to 20 percent of the qualified investment for such
 14 taxable year.

15 “(2) QUALIFIED INVESTMENT.—For purposes
 16 of paragraph (1), the qualified investment for any
 17 taxable year is the basis of each influenza vaccine
 18 manufacturing facilities property placed in service by
 19 the taxpayer during such taxable year.

20 “(3) INFLUENZA VACCINE MANUFACTURING FA-
 21 CILITIES PROPERTY.—For purposes of this sub-
 22 section, the term ‘influenza vaccine manufacturing
 23 facilities property’ means real and tangible personal
 24 property—

1 “(A)(i) the original use of which com-
2 mences with the taxpayer, or

3 “(ii) which is acquired through purchase
4 (as defined by section 179(d)(2)),

5 “(B) which is depreciable under section
6 167,

7 “(C) which is used for the manufacture,
8 distribution, or research and development of in-
9 fluenza vaccines, and

10 “(D) which is in compliance with any
11 standards and regulations which are promul-
12 gated by the Food and Drug Administration,
13 the Occupational Safety and Health Adminis-
14 tration, or the Environmental Protection Agen-
15 cy and which are applicable to such property.

16 “(4) CERTAIN PROGRESS EXPENDITURE RULES
17 MADE APPLICABLE.—Rules similar to rules of sub-
18 sections (c)(4) and (d) of section 46 (as in effect on
19 the day before the date of the enactment of the Rev-
20 enue Reconciliation Act of 1990) shall apply for pur-
21 poses of this subsection.

22 “(5) TERMINATION.—This subsection shall not
23 apply to any property placed in service after Decem-
24 ber 31, 2014.”.

25 (b) TECHNICAL AMENDMENTS.—

1 (1) Subparagraph (C) of section 49(a)(1) of the
 2 Internal Revenue Code of 1986 is amended by strik-
 3 ing “and” at the end of clause (ii), by striking the
 4 period at the end of clause (iii) and inserting
 5 “, and”, and by adding at the end the following new
 6 clause:

7 “(iv) the basis of any influenza vac-
 8 cine manufacturing facilities property.”.

9 (2) Subparagraph (E) of section 50(a)(2) of
 10 such Code is amended by inserting “or 48(c)(4)” be-
 11 fore the period.

12 (3)(A) The section heading for section 48 of
 13 such Code is amended to read as follows:

14 **“SEC. 48. OTHER CREDITS.”.**

15 (B) The table of sections for subpart E of part
 16 IV of subchapter A of chapter 1 of such Code is
 17 amended by striking the item relating to section 48
 18 and inserting the following:

“Sec. 48. Other credits.”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to property placed in service after
 21 December 31, 2004, under rules similar to the rules of
 22 section 48(m) of the Internal Revenue Code of 1986 (as
 23 in effect on the day before the date of enactment of the
 24 Revenue Reconciliation Act of 1990).